
HOUSE BILL 2303

State of Washington

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By Representatives Chandler, Regala, Huff, Kastama, Bush, McDonald, Sullivan and Linville

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1 AN ACT Relating to water rights; and amending RCW 90.03.383 and
2 90.03.290.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
5 as follows:

6 (1) The legislature recognizes the value of interties for improving
7 the reliability of public water systems, enhancing their management,
8 and more efficiently utilizing the increasingly limited resource.
9 Given the continued growth in the most populous areas of the state, the
10 increased complexity of public water supply management, and the trend
11 toward regional planning and regional solutions to resource issues,
12 interconnections of public water systems through interties provide a
13 valuable tool to ensure reliable public water supplies for the citizens
14 of the state. Public water systems have been encouraged in the past to
15 utilize interties to achieve public health and resource management
16 objectives. The legislature finds that it is in the public interest to
17 recognize interties existing and in use as of January 1, 1991, and to
18 have associated water rights modified by the department of ecology to
19 reflect current use of water through those interties, pursuant to

1 subsection (3) of this section. The legislature further finds it in
2 the public interest to develop a coordinated process to review
3 proposals for interties commencing use after January 1, 1991.

4 (2) For the purposes of this section, the following definitions
5 shall apply:

6 (a) "Interties" are interconnections between public water systems
7 permitting exchange or delivery of water between those systems for
8 other than emergency supply purposes, where such exchange or delivery
9 is within established instantaneous and annual withdrawal rates
10 specified in the (~~systems~~) supplying system's existing water right
11 permits or certificates, or contained in claims filed pursuant to
12 chapter 90.14 RCW, and which results in better management of public
13 water supply consistent with existing rights and obligations.
14 Interties include interconnections between public water systems
15 permitting exchange or delivery of water to serve as primary or
16 secondary sources of supply, but do not include development of new
17 sources of supply to meet future demand.

18 (b) "Service area" is the area designated in a water system plan or
19 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
20 respectively. When a public water system does not have a designated
21 service area subject to the approval process of those chapters, the
22 service area shall be the designated place of use contained in the
23 water right permit or certificate, or contained in the claim filed
24 pursuant to chapter 90.14 RCW.

25 (3) Public water systems with interties existing and in use as of
26 January 1, 1991, or that have received written approval from the
27 department of health prior to that date, shall file written notice of
28 those interties with the department of health and the department of
29 ecology. The notice may be incorporated into the public water system's
30 five-year update of its water system plan, but shall be filed no later
31 than June 30, 1996. The notice shall identify the location of the
32 intertie; the dates of its first use; the purpose, capacity, and
33 current use; the intertie agreement of the parties and the service
34 areas assigned; and other information reasonably necessary to modify
35 the water right permit. Notwithstanding the provisions of RCW
36 90.03.380 and 90.44.100, for public water systems with interties
37 existing and in use as of January 1, 1991, the department of ecology,
38 upon receipt of notice meeting the requirements of this subsection,
39 shall, as soon as practicable, modify the place of use descriptions in

1 the water right permits, certificates, or claims to reflect the actual
2 use through such interties, provided that the place of use is within
3 service area designations established in a water system plan approved
4 pursuant to chapter 43.20 RCW, or a coordinated water system plan
5 approved pursuant to chapter 70.116 RCW, and further provided that the
6 water used is within the supplying public water system's instantaneous
7 and annual withdrawal rates specified in ((the)) its water right permit
8 and that no outstanding complaints of impairment to existing water
9 rights have been filed with the department of ecology prior to
10 September 1, 1991. Where such complaints of impairment have been
11 received, the department of ecology shall make all reasonable efforts
12 to resolve them in a timely manner through agreement of the parties or
13 through available administrative remedies.

14 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
15 exchange or delivery of water through interties commencing use after
16 January 1, 1991, shall be permitted when the intertie improves overall
17 system reliability, enhances the manageability of the systems, provides
18 opportunities for conjunctive use, or delays or avoids the need to
19 develop new water sources, and otherwise meets the requirements of this
20 section, provided that ((each)) a supplying public water system's water
21 use shall not exceed the instantaneous or annual withdrawal rate
22 specified in its water right authorization, shall not adversely affect
23 existing water rights, and shall not be inconsistent with state-
24 approved plans such as water system plans or other plans which include
25 specific proposals for construction of interties. A receiving public
26 water system's use may exceed its water right authorization if the
27 receiving public water system's withdrawal does not exceed the
28 instantaneous or annual withdrawal rate specified in the receiving
29 public water system's water right authorization. Interties commencing
30 use after January 1, 1991, shall not be inconsistent with regional
31 water resource plans developed pursuant to chapter 90.54 RCW.

32 (5) For public water systems subject to the approval process of
33 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
34 commencing use after January 1, 1991, shall be incorporated into water
35 system plans pursuant to chapter 43.20 RCW or coordinated water system
36 plans pursuant to chapter 70.116 RCW and submitted to the department of
37 health and the department of ecology for review and approval as
38 provided for in subsections (5) through (9) of this section. The plan
39 shall state how the proposed intertie will improve overall system

1 reliability, enhance the manageability of the systems, provide
2 opportunities for conjunctive use, or delay or avoid the need to
3 develop new water sources.

4 (6) The department of health shall be responsible for review and
5 approval of proposals for new interties. In its review the department
6 of health shall determine whether the intertie satisfies the criteria
7 of subsection (4) of this section, with the exception of water rights
8 considerations, which are the responsibility of the department of
9 ecology, and shall determine whether the intertie is necessary to
10 address emergent public health or safety concerns associated with
11 public water supply.

12 (7) If the intertie is determined by the department of health to be
13 necessary to address emergent public health or safety concerns
14 associated with public water supply, the public water system shall
15 amend its water system plan as required and shall file an application
16 with the department of ecology to change its existing water right to
17 reflect the proposed use of the water as described in the approved
18 water system plan. The department of ecology shall process the
19 application for change pursuant to RCW 90.03.380 or 90.44.100 as
20 appropriate, except that, notwithstanding the requirements of those
21 sections regarding notice and protest periods, applicants shall be
22 required to publish notice one time, and the comment period shall be
23 fifteen days from the date of publication of the notice. Within sixty
24 days of receiving the application, the department of ecology shall
25 issue findings and advise the department of health if existing water
26 rights are determined to be adversely affected. If no determination is
27 provided by the department of ecology within the sixty-day period, the
28 department of health shall proceed as if existing rights are not
29 adversely affected by the proposed intertie. The department of ecology
30 may obtain an extension of the sixty-day period by submitting written
31 notice to the department of health and to the applicant indicating a
32 definite date by which its determination will be made. No additional
33 extensions shall be granted, and in no event shall the total review
34 period for the department of ecology exceed one hundred eighty days.

35 (8) If the department of health determines the proposed intertie
36 appears to meet the requirements of subsection (4) of this section but
37 is not necessary to address emergent public health or safety concerns
38 associated with public water supply, the department of health shall
39 instruct the applicant to submit to the department of ecology an

1 application for change to the underlying water right or claim as
2 necessary to reflect the new place of use. The department of ecology
3 shall consider the applications pursuant to the provisions of RCW
4 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
5 interties and associated water rights the department of ecology
6 determines that additional information is required to act on the
7 application, the department may request applicants to provide
8 information necessary for its decision, consistent with agency rules
9 and written guidelines. Parties disagreeing with the decision of the
10 department of ecology on the application for change in place of use may
11 appeal the decision to the pollution control hearings board.

12 (9) The department of health may approve plans containing intertie
13 proposals prior to the department of ecology's decision on the water
14 right application for change in place of use. However, notwithstanding
15 such approval, construction work on the intertie shall not begin until
16 the department of ecology issues the appropriate water right document
17 to the applicant consistent with the approved plan.

18 **Sec. 2.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
19 as follows:

20 When an application complying with the provisions of this chapter
21 and with the rules (~~and regulations~~) of the department has been
22 filed, the same shall be placed on record with the department, and it
23 shall be its duty to investigate the application, and determine what
24 water, if any, is available for appropriation, and find and determine
25 to what beneficial use or uses it can be applied. If it is proposed to
26 appropriate water for irrigation purposes, the department shall
27 investigate, determine and find what lands are capable of irrigation by
28 means of water found available for appropriation. If it is proposed to
29 appropriate water for the purpose of power development, the department
30 shall investigate, determine and find whether the proposed development
31 is likely to prove detrimental to the public interest, having in mind
32 the highest feasible use of the waters belonging to the public. If the
33 application does not contain, and the applicant does not promptly
34 furnish sufficient information on which to base such findings, the
35 department may issue a preliminary permit, for a period of not to
36 exceed three years, requiring the applicant to make such surveys,
37 investigations, studies, and progress reports, as in the opinion of the
38 department may be necessary. If the applicant fails to comply with the

1 conditions of the preliminary permit, it and the application or
2 applications on which it is based shall be automatically canceled and
3 the applicant so notified. If the holder of a preliminary permit
4 shall, before its expiration, file with the department a verified
5 report of expenditures made and work done under the preliminary permit,
6 which, in the opinion of the department, establishes the good faith,
7 intent and ability of the applicant to carry on the proposed
8 development, the preliminary permit may, with the approval of the
9 governor, be extended, but not to exceed a maximum period of five years
10 from the date of the issuance of the preliminary permit. The
11 department shall make and file as part of the record in the matter,
12 written findings of fact concerning all things investigated, and if it
13 shall find that there is water available for appropriation for a
14 beneficial use, and the appropriation thereof as proposed in the
15 application will not impair existing rights or be detrimental to the
16 public welfare, it shall issue a permit stating the amount of water to
17 which the applicant shall be entitled and the beneficial use or uses to
18 which it may be applied: PROVIDED, That where the water applied for is
19 to be used for irrigation purposes, it shall become appurtenant only to
20 such land as may be reclaimed thereby to the full extent of the soil
21 for agricultural purposes. But where there is no unappropriated water
22 in the proposed source of supply, or where the proposed use conflicts
23 with existing rights, or threatens to prove detrimental to the public
24 interest, having due regard to the highest feasible development of the
25 use of the waters belonging to the public, it shall be duty of the
26 department to reject such application and to refuse to issue the permit
27 asked for. If the permit is refused because of conflict with existing
28 rights and such applicant shall acquire same by purchase or
29 condemnation under RCW 90.03.040, the department may thereupon grant
30 such permit. Any application may be approved for a less amount of
31 water than that applied for, if there exists substantial reason
32 therefor, and in any event shall not be approved for more water than
33 can be applied to beneficial use for the purposes named in the
34 application. In determining whether or not a permit shall issue upon
35 any application, it shall be the duty of the department to investigate
36 all facts relevant and material to the application. However, the
37 department shall not consider the existence of interties when the
38 department makes a determination on applications for new water rights,
39 changes, or transfers by a public water system that is receiving or may

1 receive water through an intertie authorized under RCW 90.03.383.
2 After the department approves (~~said~~) the application in whole or in
3 part and before any permit shall be issued thereon to the applicant,
4 such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
5 FURTHER, That in the event a permit is issued by the department upon
6 any application, it shall be its duty to notify the director of fish
7 and wildlife of such issuance.

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